

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NO. K05-R-26**

**RUTH J. ZOELLER**

**APPELLANT**

**VS.**

**ORDER NO. K-19478**

**FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE**

**APPELLEE**

\* \* \* \* \*

Motion having been made by the Finance and Administration Cabinet, Department of Revenue (“Department”) to Dismiss the Appellant’s appeal for lack of jurisdiction and both the Appellant and Appellee have filed numerous motions and other pleadings before the Kentucky Board of Tax Appeals and the Board having reviewed same,

**IT IS HEREBY ORDERED** that the Tax Appeal Board does not have jurisdiction to determine the issues raised by Appellant for the following reasons:

A. In accordance with KRS 131.340(3), an aggrieved party, such as the Appellant, must file an appeal with the Board of Tax Appeals within thirty (30) days from the date of the mailing of the adverse ruling, order or determination. See also 103 KAR 1.010, Section 4.

The Kentucky Court of Appeals has specifically ruled that in order for an appeal to be timely, it must be received by the Kentucky Board of Tax Appeals within thirty (30) days of the ruling, order or determination. More specifically, in the case of **Revenue Cabinet v. JRS Data Systems, Inc.**, 738 S.W.2d 828, 830 (Ky.App. 1987), the court stated on page 830:

[I]t is clear that the mere act of depositing a legal document in the mail, although a proper method for transmitting to a public office a document which is required to be

filed, does not as such amount to a “filing” of the document. On the contrary, until such time as the document actually arrives at the appropriate office, it has not been “filed” for purposes of a statute mandating its filing. It follows, therefore, that the court erred by concluding that, for purposes of former KRS 131.340(2) [now KRS 131.340(3)], the “filing” of appellee’s petition of appeal was effected by its deposit in the mail.

In the present case, the adverse ruling determined by the Appellee, **FINANCE AND ADMINISTRATION CABINET, DEPARTMENT OF REVENUE**, was issued on September 2, 2005, but no appeal was received by the Tax Appeal Board until October 5, 2005.

B. In addition to the failure of the Appellant to timely file an appeal, the Appellant did not, in fact, ever file an appeal. More specifically, the appeal received by the Kentucky Board of Tax Appeals on October 5, 2005 was filed by Charles M. Zoeller, Sr., not the taxpayer, **RUTH J. ZOELLER**. In order for someone to appeal an adverse determination by a state agency, that specific taxpayer, or an attorney representing said taxpayer, must file the appeal. In the present case, not only did **RUTH J. ZOELLER** not personally file the appeal, which is required by 802 KAR 1:010 Section 1(1)(b) but also Charles M. Zoeller, Sr., who did file the appeal for **RUTH J. ZOELLER**, has acknowledged in the various pleadings that he has filed before this Board, that he is “unschooled in law.” Thus, he is not an attorney acting on behalf of **RUTH J. ZOELLER** and the petition for appeal is not in conformity with 802 KAR 1:010 Section 2. (1)(3).

For the reasons stated herein, the Petition for Appeal of **RUTH J. ZOELLER**, along with all motions filed on her behalf by Charles M. Zoeller, Sr., are denied and this case is dismissed from the Tax Appeal Board based upon lack of jurisdiction.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A

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party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing

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court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER  
AND MAILING: February 16, 2006**

**KENTUCKY BOARD OF TAX APPEALS  
FULL BOARD CONCURRING**

**NANCY MITCHELL  
CHAIR**